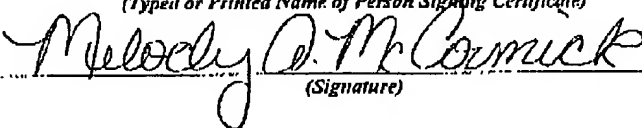


CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No. CP-5144US2
Applicant(s): David A. Giardino			
Application No. 10/772,739	Filing Date 5/10/2004	Examiner Chukwurah, Nathaniel C.	Group Art Unit 3721
Invention: MODULAR CONTROL APPARATUS FOR A POWER IMPACT TOOL			
RECEIVED CENTRAL FAX CENTER FEB 15 2005			
<p>I hereby certify that this _____ Restriction Election (2 pages) _____ (Identify type of correspondence)</p> <p>is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. <u>703-872-9306</u>)</p> <p>on <u>February 15, 2005</u> (Date)</p> <p style="text-align: right;">Melody A. McCormick (Typed or Printed Name of Person Signing Certificate)  (Signature)</p> <p style="text-align: center;">Note: Each paper must have its own certificate of mailing.</p>			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Giardino

Examiner: Chukwurah, Nathaniel C.

Serial No.: 10/772,739

Art Unit: 3721

Filed: 05/10/2004

For: MODULAR CONTROL APPARATUS FOR A POWER IMPACT TOOLCommissioner for Patents
Washington D.C. 20231**RESTRICTION ELECTION**

In response to the Restriction Requirement dated January 25, 2005, Applicants hereby provisionally elects Group I, claims 56-61 and 68-89, drawn to a method of using a modular control apparatus, classified in class 173, subclass 1. This election is made with traverse, and Applicant hereby reserves the right to file divisional application(s) in connection with unelected claims 62 and 63, drawn to method of making modular control apparatus; claim 64, drawing to method making pneumatic power tool; and/or, claim 67, drawn to method of making an apparatus.

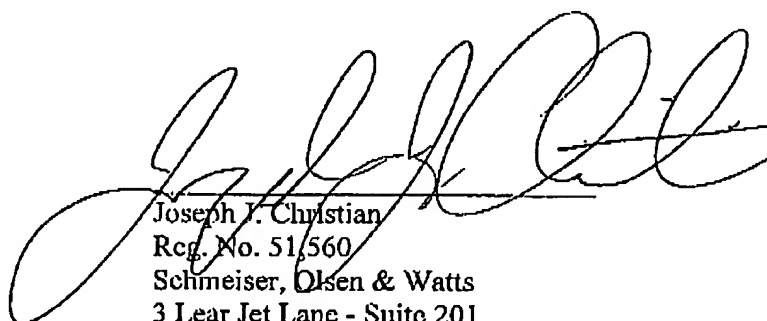
With regard to the Restriction Requirement, Applicant respectfully submits that the subject matter of all claims 56-64 and 67-69 is sufficiently related that a thorough search for the subject matter of any one group of claims would encompass a search for the subject matter of the remaining claims. Thus, Applicant respectfully submits that the search and the examination of the entire application could be made without serious burden. See MPEP § 803, in which it is stated that "if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits." Applicant respectfully submits that this

policy should apply in the present application in order to avoid unnecessary delay and expense to Applicant and duplicative examination by the Patent Office.

Further, Applicant points to additional facts that further support Applicant's position. The "parent" application, serial number 10/213,702, received a restriction requirement on August 4, 2003, that restricted the originally filed claims into two groups. Group I being claims 1-55 and 65-66 drawn to a modular control apparatus for a tool and group II being claims 56-64 and 67-69 drawn to a method of using a modular control apparatus. In response to said restriction, Applicant elected Group I and subsequently filed the instant divisional application for the non-elected claims (i.e., claims 56-64 and 67-69). Curiously, now the Applicant is receiving a further "second" restriction on the same claims that were originally grouped together by the Examiner into one group on the "first" restriction, wherein the same claims are now allegedly four groups. Also, the claims in all four groups are in the same class (i.e., 173); in fact, Group I and Group IV are also in the same exact subclass (i.e., 1).

Should the Examiner require or request anything further from Applicant prior to examination, the Examiner is requested to contact Applicant's undersigned representative at the telephone number below. Otherwise, Applicant requests early and favorable examination on the merits.

Dated: February 15, 2005



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